

## **MUTUAL TRAFFIC EXCHANGE AGREEMENT**

This Mutual Traffic Exchange Agreement ("Agreement") is effective as of the 10th day of May, 2005 (the "Effective Date"), by and between Chesnee Telephone Company ("Chesnee") with offices at 208 South Alabama Avenue, P. O. Box 430, Chesnee South Carolina 29323 and KMC Telecom III, LLC ("KMC") with offices at 1755 North Brown Road, Lawrenceville, Georgia 30043.

WHEREAS, KMC is a Competitive Local Exchange Carrier authorized by South Carolina Public Service Commission to provide telecommunications services within its certified area in the State of South Carolina;

WHEREAS, Chesnee is an Incumbent Local Exchange Carrier in the State of South Carolina;

WHEREAS, KMC and Chesnee exchange telecommunications traffic between their networks and wish to establish an arrangement for exchange of such traffic between their networks;

NOW, THEREFORE, in consideration of the mutual provisions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, KMC and Chesnee hereby agree as follows:

### **1.0 DEFINITIONS**

As used in this Agreement, the following terms shall have the meanings specified below:

- 1.1 "Act", as used in this Agreement, means the Communications Act of 1934 (47 U.S.C. Section 151 *et seq.*), as amended, and as from time to time interpreted in the duly authorized rules and regulations of the Federal Communications Commission ("FCC") or the Commission.
- 1.2 "Commission" means the South Carolina Public Service Commission.
- 1.3 "Common Channel Signaling System No. 7" (i.e., "SS7" or "CCS") is a global standard for telecommunications defined by the International Telecommunication Union (ITU) Telecommunication Standardization Sector (ITU-T). The standard defines the procedures and protocol by which network elements in the public switched telephone network (PSTN) exchange information over a digital signaling network to effect wireless (cellular) and wireline call setup, routing and control.

The ITU definition of SS7 allows for national variants such as the American National Standards Institute (ANSI) and Bell Communications Research (Telcordia Technologies) standards used in North America and the European Telecommunications Standards Institute (ETSI) standard used in Europe.

- 1.4 "DS1" is a digital signal rate of 1.544 Megabits per second ("Mbps").
- 1.5 "DS3" is a digital signal rate of 44.736 Mbps.
- 1.6 "Interexchange Toll Traffic" is defined for all purposes under this Agreement as all telecommunications traffic that originates from KMC or Chesnee end user customers and terminates to Chesnee or KMC end user customers that is not included within the definition of EAC or ISP-Bound Traffic as defined in Chesnee's General Subscriber Service Tariff or this Agreement, EAC Exchanges are listed in Appendix A to this Agreement. Interexchange Toll Traffic specifically excludes telecommunications traffic that is routed through IXC's.
- 1.7 "Extended Area Calling Traffic" or "EAC Traffic" is defined for all purposes under this Agreement as telecommunications traffic that is originated by an end user customer of one Party, that is physically located in one Exchange, and terminates to an end user customer of the other Party, that is physically located in another Exchange, where the originating and terminating Exchanges have EAC between them. EAC Exchanges are listed in Appendix A to this Agreement. The terms Exchange and EAC are defined and specified in Chesnee's General Subscriber Service Tariff.
- 1.8 "ISP-Bound Traffic" is any Telecommunications Traffic that originates on one Party's network and is delivered by the other Party to an Internet Service Provider in order to enable the originating Party's subscriber to communicate with destinations on the Internet, to or through an Enhanced Service Provider ("ESP") or Internet Service Provider ("ISP") physically located within the originating end user customer's EAC Exchange(s) as listed in Appendix A.
- 1.9 "Party" means either KMC or Chesnee, and "Parties" means KMC and Chesnee.
- 1.10 "Point(s) of Interconnection" or "POI(s)" means the physical location(s) within Chesnee's network, at which the Parties' networks meet for the purpose of exchanging EAC Traffic and ISP-Bound Traffic.
- 1.11 "Rate Center" means the specific geographic point and corresponding geographic area or Exchange that is associated with one or more NPA/NXX codes that have been assigned to an incumbent LEC for its provision of telecommunications service.

1.12 “VoIP” means any IP-enabled, real-time, multidirectional voice call, including, but not limited to, service that mimics traditional telephony. IP-Enabled Voice Traffic includes:

- (i) Voice traffic originating on Internet Protocol Connection (IPC), and which terminates on the PSTN; and
- (ii) Voice traffic originated on the PSTN, and which terminates on IPC, and
- (iii) Voice traffic originating on the PSTN, which is transported through an IPC, and which ultimately, terminates on the PSTN

## **2.0 SCOPE**

2.1 Chesnee and KMC agree to mutually exchange traffic between their respective networks and enter into an arrangement accordingly, whereby EAC Traffic and ISP-Bound Traffic, as defined in this Agreement, that is originated on Chesnee’s or KMC’s network by Chesnee’s end user customers or KMC’s end user customers respectively and is terminated to a Chesnee or KMC end user customer can be completed. In order to accomplish this in an appropriate manner, the Parties agree to the following terms and conditions contained in this Agreement.

2.2 Both parties shall adhere to the North American Numbering Plan as described by the Industry. Each Party shall route EAC and ISP-Bound Traffic from its network to the other Party’s network over the dedicated transport facilities. Each Party shall be responsible for updating the LERG to reflect the NPA-NXX codes assigned to that Party. Each Party shall be responsible for updating the routing instructions in its own switches to reflect the NPA-NXX assignments of the other Party as required.

2.3 The FCC has several open dockets regarding the appropriate treatment and compensation for VOIP. The Parties agree that calls that do not touch the PSTN are not subject to access charges. The Parties agree to abide by the ruling of the FCC in WC Docket No. 02-361. The Parties are not able to reach agreement as to the appropriate compensation on voice traffic that either originates on PSTN and terminates on Internet Protocol Connection (IPC) or originates on IPC and terminates on PSTN. Notwithstanding the foregoing the Parties agree that VoIP traffic that meets the following criteria is a telecommunications service and is subject to interstate or intrastate access charges payable to the Party serving the VoIP provider:

- (1) uses ordinary customer premises equipment (CPE) with no enhanced functionality;
- (2) originates and terminates on the public switched telephone network (PSTN);

and

(3) undergoes no net protocol conversion and provides no enhanced functionality to end users due to the provider's use of IP technology.

The Parties disagree on the appropriate compensation for VoIP traffic that does not meet the above criteria. Both Parties reserve the right to bill for traffic and pursue compensation for traffic that does not meet the criteria above, including invoking the Dispute Resolution provisions of this Agreement. Neither Party waives its rights to participate and fully present its respective positions in any proceeding before the Commission, FCC or other authority with jurisdiction dealing with VoIP traffic. Both Parties agree to renegotiate this sub-section in accordance with the FCC ruling, when the FCC rules on the compensation for VoIP traffic.

2.4 The Parties do not agree on the proper compensation for dial-up calls to an ISP telephone number rate centered within the calling end user customer's EAC calling area when the ISP modem banks are physically located outside of the originating end user customer's EAC calling area as listed in Appendix A. However, it is understood by the Parties that, in this case, KMC's ISP end user customers' modem banks are physically located within Chesnee's end user customers' EAC calling area. The Parties agree to revisit this upon expiration of the initial term of this Agreement. In the meantime, should this arrangement change, either Party can request renegotiation of this sub-section. In no event, however, will either Party be liable for retroactive compensation related to dial up calls to ISPs with modem banks that are physically located outside of the originating end user customer's EAC calling area.

### **3.0 SERVICE ARRANGEMENT**

#### **3.1 EAC Traffic and ISP-Bound Traffic:**

3.1.1 The Parties agree to exchange ISP-Bound and EAC Traffic over dedicated transport facilities between their networks subject to the following conditions. KMC shall obtain dedicated transport facilities between Chesnee's end office switch in Chesnee (the "POI") and KMC's network in Spartanburg. In an effort to reach an agreement, as a compromise and in exchange for certain other consideration provided for in this Agreement, the Parties agree that Chesnee shall bill and KMC shall pay Chesnee \$250 per DS1, per month for the dedicated transport facilities.

3.1.2 Chesnee and KMC agree to only route EAC Traffic and ISP-Bound Traffic as defined herein over the dedicated transport facilities. Both Parties agree that compensation for EAC Traffic and ISP-Bound Traffic shall be in the form of the mutual exchange of services provided by the other Party with no billing related to exchange of such traffic issued by either Party.

3.1.3 Chesnee agrees to include an NPA/NXX assigned to KMC in its EAC calling scope to the same extent as any other NPA/NXX in the same rate center, when there are dedicated transport facilities between the Parties and such facilities can be utilized to complete EAC and ISP-Bound calls. In addition, the rating and routing point assigned to KMC's NPA/NXX should also be the EAC exchange.

### **3.2 Interexchange Toll Traffic:**

The Parties agree not to route Interexchange Toll Traffic over the dedicated transport facilities. All Interexchange Toll Traffic shall be routed in accordance with Telcordia Traffic Routing Administration instructions and shall be subject to the appropriate access charges.

### **3.3 Physical Connection:**

3.3.1 Facility Sizing: The Parties will mutually agree on the appropriate sizing for transport facilities. The capacity of transport facilities provided by each Party will be based on mutual forecasts and sound engineering practice, as mutually agreed to by the Parties. KMC will order trunks in the agreed upon quantities via an Access Service Request.

3.3.2 Interface Types: If the POI has an electrical interface, the interface will be DS1 or DS3 as mutually agreed by the Parties. When a DS3 interface is agreed to by the Parties, Chesnee will provide any multiplexing required for DS1 facilities or trunking at their end and KMC will provide any DS1 multiplexing required for facilities or trunking at their end.

3.3.3 Signaling: The Parties will connect their networks using SS7 signaling as defined in applicable industry standards including ISDN user part ("ISUP") for trunk signaling and transaction capabilities application part ("TCAP") for common channel signaling based features in the connection of their networks. CPN shall be available for at least 95% of the calls. Signaling information shall be shared between the Parties at no charge to either Party.

3.3.3.1 The terminating Party (that is, the Party to whom Traffic is sent) shall be responsible for creating or obtaining any billing records needed in order to bill the originating Party. Measurement of minutes of use shall be in actual conversation seconds. Each Party shall calculate the number of minutes of traffic it terminates from the other Party based on standard automatic message accounting records made within that Party's network. All Common Channel Signaling Parameters will be provided, including automatic number identification ("ANI"), originating line information ("OLI"), calling company category, charge number, etc.

3.3.4 Equipment Additions: Where additional equipment is required, such equipment will be obtained, engineered, and installed on the same basis and with the same intervals as any similar growth job for the Parties' internal customer demand.

### **3.4 Grade of Service:**

Each Party will provision their network to provide designed blocking objective of a P.01.

### **3.5 Network Management:**

3.5.1 Protective Controls: Either Party may use protective network traffic management controls such as 7-digit and 10-digit code gaps on traffic toward each other's network, when required to protect the public switched network from congestion or failure, or focused overload. KMC and Chesnee will immediately notify each other of any protective control action planned or executed.

3.5.2 Mass Calling: Both Parties will cooperate and share pre-planning information regarding cross-network call-ins expected to generate large or focused temporary increases in call volumes. The Parties agree that the promotion of mass calling services is not in the best interest of either Party. If one Party's network is burdened repeatedly more than the other Party's network, the Parties will meet and discuss the cause and impact of such calling and will agree on how to equitably share the costs and revenues associated with the calls and on methods for managing the call volume.

3.5.3 Network Harm: Neither Party will use any service related to or provided in this Agreement in any manner that interferes with third parties in the use of their service, prevents third parties from using their service, impairs the quality of service to other carriers or to either Party's Customers; causes electrical hazards to either Party's personnel, damage to either Party's equipment or malfunction of either Party's billing equipment (individually and collectively, "Network Harm"). If a Network Harm will occur or if a Party reasonably determines that a Network Harm is imminent, such Party will, where practicable, notify the other Party that temporary discontinuance or refusal of service may be required, provided, however, wherever prior notice is not practicable, such Party may temporarily discontinue or refuse service forthwith, if such action is reasonable under the circumstances. In case of such temporary discontinuance or refusal, such Party will:

3.5.3.1. Promptly notify the other Party of such temporary discontinuance or refusal;

3.5.3.2. Afford the other Party the opportunity to correct the situation which gave rise to such temporary discontinuance or refusal; and

3.5.3.3. Inform the other Party of its right to bring a complaint to the Commission, FCC, or a court of competent jurisdiction.

#### **4.0 CHARGES, PAYMENT AND BILLING**

4.1 To the extent a Party provides services for which compensation is due hereunder, such Party shall send an invoice, on a monthly basis, reflecting the calculation of charges due for services provided under this Agreement.

4.2 The Parties agree that disputed and undisputed amounts due under this Agreement shall be handled as follows:

4.2.1 If any portion of an amount due to a Party (the "Billing Party") under this Agreement is subject to a bona fide dispute between the Parties, the Party billed (the "Non-Paying Party") shall, within thirty (30) days of its receipt of the invoice containing such disputed amount, give written notice to the Billing Party of the amounts it disputes ("Disputed Amounts") and include in such notice the specific details and reasons for disputing each item. The Non-Paying Party shall pay when due all undisputed amounts to the Billing Party. The Parties will work together in good faith to resolve issues relating to the disputed amounts. If the dispute is resolved such that payment of the disputed amount is required the Non-Paying Party shall pay the full disputed amount with one and one half per cent (1 ½%) interest per month. In addition, the Billing Party may initiate a complaint proceeding with the appropriate regulatory or judicial entity, if unpaid undisputed amounts become more than 90 days past due, provided the Billing Party gives an additional 30 days notice and opportunity to cure the default.

4.2.2 Any undisputed amounts not paid when due shall accrue interest from the date such amounts were due at the lesser of (i) one and one-half percent (1-1/2%) per month or (ii) the highest rate of interest that may be charged under South Carolina's applicable law.

4.2.3 Undisputed amounts shall be paid within thirty (30) days of receipt of invoice from the Billing Party. If the payment due date is a Saturday, Sunday or a designated bank holiday, payment shall be made the next business day.

4.3 Upon termination or expiration of this Agreement in accordance with Section 8:

- (a) Each Party shall comply immediately with its obligations as set forth within this Agreement;
- (b) Each Party shall promptly pay all amounts (including any late payment charges) owed under this Agreement;
- (c) Each Party's indemnification obligations and confidentiality obligations shall survive termination or expiration of this Agreement.

4.4 The Parties shall each perform traffic recording and identification functions necessary to provide the services contemplated hereunder. Each Party shall calculate minutes of use based on standard automatic message accounting records made within each Party's network. The records shall contain ANI or service provider information necessary to identify the individual Party.

4.5 Limitation of back billing shall be six months in accordance with state regulation. (See SC. Code 58.103-623.4.)

## **5.0 AUDIT AND REVIEW**

5.1 Each Party is responsible for the accuracy of its data as submitted to the other Party. Upon reasonable written notice, each Party or its authorized representative shall have the right to conduct annual reviews of the relevant data possessed by the other Party to give assurance of compliance with the provisions of this Agreement. These reviews will consist of any examinations and verification of data involving records, systems, procedures and other information related to the services performed by either Party related to charges or payments made in connection with this Agreement. Each Party's right to access information for verification purposes is limited to data not in excess of twelve (12) months in age. The Party requesting a verification review shall fully bear its own costs associated with conducting a review. The Party being reviewed will provide access to necessary and applicable information at no charge to the reviewing Party during normal business hours.

5.2 Each Party may request to inspect, during normal business hours, the records which are the basis for any monthly bill issued by the other Party and to request copies thereof provided that the requested records do not exceed twelve (12) months in age from the date the monthly bill containing said record information was issued.

## **6.0 NOTICE OF CHANGES**

If a Party contemplates a change in its network, which it reasonably believes will materially affect the inter-operability of its network with the other Party, the Party making the change shall provide at least ninety (90) days advance written notice of such change to the other Party.

## **7.0 GENERAL RESPONSIBILITIES OF THE PARTIES**

7.1 The Parties are each solely responsible for participation in and compliance with national network plans, including The National Network Security Plan and The Emergency Preparedness Plan. Neither Party shall use any service related to or use any of the Services



provided in this Agreement in any manner that prevents other persons from using their service or destroys the normal quality of service to other carriers or to either Party's customers, and subject to notice and a reasonable opportunity of the offending Party to cure any violation, either Party may discontinue or refuse service if the other Party violates this provision.

7.2 Each Party is solely responsible for the services it provides to its customers and to other Telecommunications Carriers.

7.3 Each Party is responsible for obtaining Local Exchange Routing Guide ("LERG") listings of the Common Language Location Identifier ("CLLI") assigned to its switches.

7.4 Each Party shall be responsible for its own independent connections to the 911/E911 network.

## **8.0 TERM AND TERMINATION**

8.1 The initial term of this Agreement shall be for a one-year term ("Term"), which shall commence on the Effective Date. This Agreement shall automatically renew for successive six-month periods, unless, not less than one hundred twenty (120) days prior to the end of the Term or any renewal term, either party notifies the other party of its intent to terminate this Agreement or renegotiate a new agreement. In the event of such renegotiations, this Agreement shall remain in effect until such time that a new agreement becomes effective.

8.2 Either Party may terminate this Agreement in whole or in part in the event of a default of the other Party, provided, however, that the non-defaulting Party notifies the defaulting Party in writing of the alleged default and the defaulting Party does not implement mutually acceptable steps to remedy such alleged default within thirty (30) days after receipt of written notice thereof.

## **9.0 INDEMNIFICATION**

9.1 Each Party (the "Indemnifying Party") shall indemnify and hold harmless the other Party ("Indemnified Party") from and against loss, cost, claim liability, damage, and expense (including reasonable attorney's fees) to customers and other third parties for:

(1) damage to tangible personal property or for personal injury proximately caused by the negligence or willful misconduct of the Indemnifying Party, its employees, agents or contractors;

(2) claims for libel, slander, or infringement of copyright arising from the material transmitted over the Indemnified Party's facilities arising from the

Indemnifying Party's own communications or the communications of such Indemnifying Party's customers; and

(3) claims for infringement of patents arising from combining the Indemnified Party's facilities or services with, or the using of the Indemnified Party's services or facilities in connection with, facilities of the Indemnifying Party.

Neither Party shall accept terms of a settlement that involves or references the other Party in any matter without the other Party's approval.

Notwithstanding this indemnification provision or any other provision in the Agreement, neither Party, nor its parent, subsidiaries, affiliates, agents, servants, or employees, shall be liable to the other for Consequential Damages (as defined in Section 10.3).

9.2 The Indemnified Party will notify the Indemnifying Party promptly in writing of any claims, lawsuits, or demands by customers or other third parties for which the Indemnified Party alleges that the Indemnifying Party is responsible under this Section, and, if requested by the Indemnifying Party, will tender the defense of such claim, lawsuit or demand.

(1) In the event the Indemnifying Party does not promptly assume or diligently pursue the defense of the tendered action, then the Indemnified Party may proceed to defend or settle said action and the Indemnifying Party shall hold harmless the Indemnified Party from any loss, cost liability, damage and expense.

(2) In the event the Party otherwise entitled to indemnification from the other elects to decline such indemnification, then the Party making such an election may, at its own expense, assume defense and settlement of the claim, lawsuit or demand.

(3) The Parties will cooperate in every reasonable manner with the defense or settlement of any claim, demand, or lawsuit.

(4) Neither Party shall accept the terms of a settlement that involves or references the other Party in any matter without the other Party's approval.

## **10.0 LIMITATION OF LIABILITY**

10.1 No liability shall attach to either Party, its parents, subsidiaries, affiliates, agents, servants, employees, officers, directors, or partners for damages arising from errors, mistakes, omissions, interruptions, or delays in the course of establishing, furnishing, rearranging, moving, terminating, changing, or providing or failing to provide services or facilities (including the obtaining or furnishing of information with respect thereof or with respect to users of the services or facilities) in the absence of gross negligence or willful misconduct.

10.2 Except as otherwise provided in Section 9.0, no Party shall be liable to the other Party for any loss, defect or equipment failure caused by the conduct of the first Party, its agents, servants, contractors or others acting in aid or concert with that Party, except in the case of gross negligence or willful misconduct.

10.3 Except as otherwise provided in Section 9.0, no Party shall have any liability whatsoever to the other Party for any indirect, special, consequential, incidental or punitive damages, including but not limited to loss of anticipated profits or revenue or other economic loss in connection with or arising from anything said, omitted or done hereunder (collectively, "Consequential Damages"), even if the other Party has been advised of the possibility of such damages.

## **11.0 DISCLAIMER**

**EXCEPT AS OTHERWISE PROVIDED HEREIN, NEITHER PARTY MAKES ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY AS TO MERCHANTABILITY OR FITNESS FOR INTENDED OR PARTICULAR PURPOSE WITH RESPECT TO SERVICES PROVIDED HEREUNDER. ADDITIONALLY, NEITHER PARTY ASSUMES ANY RESPONSIBILITY WITH REGARD TO THE CORRECTNESS OF DATA OR INFORMATION SUPPLIED BY THE OTHER PARTY WHEN THIS DATA OR INFORMATION IS ACCESSED AND USED BY A THIRD-PARTY.**

## **12.0 MISCELLANEOUS**

### **12.1 Authorization**

12.1.1 Chesnee is a corporation duly organized, validly existing and in good standing under the laws of the State of South Carolina and has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder, subject to any necessary regulatory approval.

12.1.2 KMC Telecom V, Inc. is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder, subject to any necessary regulatory approval.

12.1.3 KMC Telecom III, LLC. is a limited liability corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and has full power

and authority to execute and deliver this Agreement and to perform its obligations hereunder, subject to any necessary regulatory approval.

12.2 Compliance. Each Party shall comply with all applicable federal, state, and local laws, rules and regulations applicable to its performance under this Agreement.

12.3 Independent Contractors. Neither this Agreement, nor any actions taken by KMC or Chesnee in compliance with this Agreement, shall be deemed to create an agency or joint venture relationship between KMC and Chesnee, or any relationship other than that of provider and receiver of services. Neither this Agreement, nor any actions taken by KMC or Chesnee in compliance with this Agreement, shall create a contractual, agency, or any other type of relationship or third party liability between KMC and Chesnee end users or others.

12.4 Force Majeure. Neither Party shall be liable for any delay or failure in performance of any part of this Agreement from any cause beyond its control and without its fault or negligence including, without limitation, acts of nature, acts of civil or military authority, government regulations, embargoes, epidemics, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, work stoppages, equipment failure, power blackouts, volcanic action, other major environmental disturbances, unusually severe weather conditions or any other circumstances beyond the reasonable control and without the fault or negligence of the Party affected. (collectively, a "Force Majeure Event"). If any Force Majeure condition occurs, the Party delayed or unable to perform shall give immediate notice to the other Party and shall take all reasonable steps to correct the Force Majeure condition. During the pendency of the Force Majeure, the duties of the Parties under this Agreement affected by the Force Majeure condition shall be abated and shall resume without liability thereafter.

#### 12.5 Confidentiality

12.5.1 Any information such as specifications, drawings, sketches, business information, forecasts, models, samples, data, computer programs and other software and documentation of one Party (a Disclosing Party) that is furnished or made available or otherwise disclosed to the other Party or any of its employees, contractors, or agents (its "Representatives" and with a Party, a "Receiving Party") pursuant to this Agreement ("Proprietary Information") shall be deemed the property of the Disclosing Party. Proprietary Information, if written, shall be clearly and conspicuously marked "Confidential" or "Proprietary" or other similar notice, and, if oral or visual, shall be confirmed in writing as confidential by the Disclosing Party to the Receiving Party within ten (10) days after disclosure. Unless Proprietary Information was previously known by the Receiving Party free of any obligation to keep it confidential, or has been or is subsequently made public by an act not attributable to the Receiving Party, or is explicitly agreed in writing not to be regarded as confidential, such information: (i) shall be held in confidence by each Receiving Party; (ii) shall be disclosed to only those persons who have a need for it in connection with the provision of services required to fulfill this Agreement and shall be used by those persons only for such purposes; and (iii) may be used for other purposes only upon such terms and conditions as may be mutually agreed to in advance of such use in writing by the Parties. Notwithstanding the foregoing sentence, a Receiving Party shall be entitled to disclose or

provide Proprietary Information as required by any governmental authority or applicable law, upon advice of counsel, only in accordance with Section 12.5.2 of this Agreement.

12.5.2 If any Receiving Party is required by any governmental authority or by applicable law to disclose any Proprietary Information, then such Receiving Party shall provide the Disclosing Party with written notice of such requirement as soon as possible and prior to such disclosure. The Disclosing Party may then seek appropriate protective relief from all or part of such requirement. The Receiving Party shall use all commercially reasonable efforts to cooperate with the Disclosing Party in attempting to obtain any protective relief which such Disclosing Party chooses to obtain.

12.5.3 In the event of the expiration or termination of this Agreement for any reason whatsoever, each Party shall return to the other Party or destroy all Proprietary Information and other documents, work papers and other material (including all copies thereof) obtained from the other Party in connection with this Agreement and shall use all reasonable efforts, including instructing its employees and others who have had access to such information, to keep confidential and not to use any such information, unless such information is now, or is hereafter disclosed, through no act, omission or fault of such Party, in any manner making it available to the general public.

12.6 Governing Law. For all claims under this Agreement that are based upon issues within the jurisdiction (primary or otherwise) of the FCC, the exclusive jurisdiction and remedy for all such claims shall be as provided for by the FCC and the Act. For all claims under this Agreement that are based upon issues within the jurisdiction (primary or otherwise) of the Commission, the exclusive jurisdiction for all such claims shall be with the Commission, and the exclusive remedy for such claims shall be as provided for by such Commission. In all other respects, the domestic laws of the State of South Carolina without reference to conflict of law provisions shall govern this Agreement.

The terms and conditions of this Agreement shall be subject to any and all applicable laws, rules, regulations or guidelines that subsequently may be adopted by any federal, state, or local government authority. Any modifications to this Agreement occasioned by such change shall be effected through good faith negotiations. If the parties are unable to agree to modifications incorporating such change of law within ninety (90) days of the request, either party may seek resolution from the Commission or the FCC, as appropriate.

12.7 Taxes. Each Party purchasing services hereunder shall pay or otherwise be responsible for all federal, state, or local sales, use, excise, gross receipts, transaction or similar taxes, fees or surcharges levied against or upon such purchasing Party (or the providing Party when such providing Party is permitted to pass along to the purchasing Party such taxes, fees or surcharges), except for any tax on either Party's corporate existence, status or income. Whenever possible, these amounts shall be billed as a separate item on the invoice. To the extent a sale is claimed to be for resale tax exemption, the purchasing Party shall furnish the providing Party a proper resale tax exemption certificate as authorized or required by statute or regulation by the

jurisdiction providing said resale tax exemption. Failure to timely provide such sale for resale tax exemption certificate will result in no exemption being available to the purchasing Party.

12.8 Assignment. This Agreement shall be binding upon the Parties and shall continue to be binding upon all such entities regardless of any subsequent change in their ownership. Each Party covenants that, if it sells or otherwise transfers to a third party, unless the Party which is not the subject of the sale or transfer reasonably determines that the legal structure of the transfer vitiates any such need, it will require as a condition of such transfer that the transferee agree to be bound by this Agreement with respect to services provided over the transferred facilities. Except as provided in this paragraph, neither Party may assign or transfer (whether by operation of law or otherwise) this Agreement (or any rights or obligations hereunder) to a third party without the prior written consent of the other Party which consent will not be unreasonably withheld; provided that either Party may assign this Agreement to a corporate Affiliate or an entity under its common control or an entity acquiring all or substantially all of its assets or equity by providing prior written notice to the other Party of such assignment or transfer. Any attempted assignment or transfer that is not permitted is void ab initio. Without limiting the generality of the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the Parties' respective successors and assigns.

12.9 Non-Waiver. Failure of either Party to insist on performance of any term or condition of this Agreement or to exercise any right or privilege hereunder shall not be construed as a continuing or future waiver of such term, condition, right or privilege

12.10 Notices.

12.10.1 Notices given by one Party to the other Party under this Agreement shall be in writing and shall be: (i) delivered personally; (ii) delivered by express delivery service; (iii) mailed, certified mail, return receipt requested to the following addresses of the Parties:

To: <b>KMC</b>	To: <b>Chesnee</b>
KMC Telecom III, LLC  KMC Telecom Holdings, Inc. ATTENTION: Marva Brown Johnson Senior Regulatory Counsel 1755 North Brown Road Lawrenceville, Georgia 30043 Telephone Number: 678-985-7900 Fax Number: 678-985-6213 Email: <a href="mailto:marva.johnson@kmctelecom.com">marva.johnson@kmctelecom.com</a>	Chesnee Telephone Company, Inc. 208 S. Alabama Avenue Chesnee, South Carolina 29323  Telephone Number: 864-461-2211 Fax Number: 864-461-3611 Attn: Annette Williams
With a copy to: KMC Telecom Holdings, Inc. ATTENTION: Legal Department 1545 Route 206	With a copy to: MCNAIR LAW FIRM, P.A. Post Office Box 11390 Columbia, South Carolina 29211

Bedminster, New Jersey 07921 Telephone Number: 908-470-2100 Fax Number: 908-719-8776	Telephone Number: 803-799-9800 Fax Number: 803-753-3219 Attn: Margaret M. Fox
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Or to such other address as either Party shall designate by proper notice. Notices will be deemed given as of the earlier of: (i) the date of actual receipt; (ii) the next business day when notice is sent via express mail or personal delivery; (iii) three (3) days after mailing in the case of certified U.S. mail.

12.10.2 In order to facilitate trouble reporting and to coordinate the repair of transport facilities, trunks, and other inter-network connection arrangements provided by the Parties under this Agreement, each Party has established contact(s) available 24 hours per day, seven days per week, at telephone numbers to be provided by the Parties. Each Party shall call the other at these respective telephone numbers to report trouble with connection facilities, trunks, and other inter-network connection arrangements, to inquire as to the status of trouble ticket numbers in progress, and to escalate trouble resolution.

**24-Hour Network Management Contact:**

For Chesnee:

NOC/Repair Number: 864-461-8803

For KMC:

NOC/Repair Number: 866-787-8345

Before either party reports a trouble condition, it must first use its reasonable efforts to isolate the trouble to the other Party's facilities, service, and arrangements. Each Party will advise the other of any critical nature of the inoperative facilities, service, and arrangements and any need for expedited clearance of trouble. In cases where a Party has indicated the essential or critical need for restoration of the facilities, services or arrangements, the other party shall use its best efforts to expedite the clearance of trouble.

12.11 Publicity and Use of Trademarks or Service Marks. Neither Party nor its subcontractors or agents shall use the other Party's trademarks, service marks, logos or other proprietary trade dress in any advertising, press releases, publicity matters or other promotional materials without such Party's prior written consent.

12.12 Joint Work Product. This Agreement is the joint work product of the Parties and has been negotiated by the Parties and/or their respective counsel and shall be fairly interpreted in accordance with its terms. In the event of any ambiguities, no inferences shall be drawn against either Party.

12.13 No Third Party Beneficiaries; Disclaimer of Agency. This Agreement is for the sole benefit of the Parties and their permitted assigns, and nothing herein expressed or implied shall create or be construed to create any third-party beneficiary rights hereunder. Except for provisions herein expressly authorizing a Party to act for another, nothing in this Agreement shall constitute a Party as a legal representative or agent of the other Party; nor shall a Party have the right or authority to assume, create or incur any liability or any obligation of any kind, express or implied, against, in the name of, or on behalf of the other Party, unless otherwise expressly permitted by such other Party. Except as otherwise expressly provided in this Agreement, no Party undertakes to perform any obligation of the other Party, whether regulatory or contractual, or to assume any responsibility for the management of the other Party's business.

12.14 No License. No license under patents, copyrights, or any other intellectual property right (other than the limited license to use consistent with the terms, conditions and restrictions of this Agreement) is granted by either Party, or shall be implied or arise by estoppel with respect to any transactions contemplated under this Agreement.

12.15 Technology Upgrades. Nothing in this Agreement shall limit either Parties' ability to upgrade its network through the incorporation of new equipment, new software or otherwise, provided it is to industry standards, and that the Party initiating the upgrade shall provide the other Party written notice at least ninety (90) days prior to the incorporation of any such upgrade in its network which will materially impact the other Party's service. Each Party shall be solely responsible for the cost and effort of accommodating such changes in its own network.

12.16 Entire Agreement. The terms contained in this Agreement and any Schedules, Exhibits, tariffs and other documents or instruments referred to herein are hereby incorporated into this Agreement by reference as if set forth fully herein, and constitute the entire agreement between the Parties with respect to the subject matter hereof, superseding all prior understandings, proposals and other communications, oral or written. Neither Party shall be bound by any preprinted terms additional to or different from those in this Agreement that may appear subsequently in the other Party's form documents, purchase orders, quotations, acknowledgments, invoices or other communications. This Agreement may not be amended, modified, or supplemented, nor may any obligations hereunder be waived by a Party, except by written instrument signed by both Parties. The Parties agree that their entrance into this Agreement is without prejudice to any positions they may have taken previously, or may take in future, in any legislative, regulatory, judicial or other public forum addressing any matter, including matters related to the same types of arrangements covered in this Agreement.

### **13.0 REGULATORY**

The Parties agree that their entrance into this Agreement is without prejudice to any positions they may have taken previously, or may take in future, in any legislative, regulatory, judicial or other public forum addressing any matters, including matters related to the same types of arrangements covered in this Agreement.



#### **14.0 DISPUTE RESOLUTION**

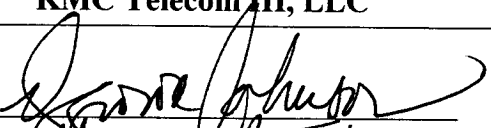
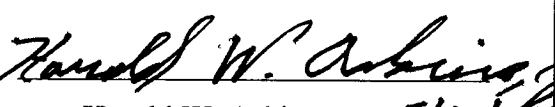
Except as provided under Section 252 of the Act with respect to the approval of this Agreement by the Commission, the Parties desire to resolve disputes arising out of or relating to this Agreement without litigation. Accordingly, except for action seeking a temporary restraining order or an injunction related to the purposes of this Agreement, or suit to compel compliance with this dispute resolution process, the Parties agree to use the following dispute resolution procedures with respect to any controversy or claim arising out of or relating to this Agreement or its breach.

14.1 Informal Resolution of Disputes. At the written request of a Party, each Party will appoint a knowledgeable, responsible representative, empowered to resolve such dispute, to meet and negotiate in good faith to resolve any dispute arising out of or relating to this Agreement. The Parties intend that these negotiations be conducted by non-lawyer, business representatives. The location, format, frequency, duration, and conclusion of these discussions shall be left to the discretion of the representatives. Upon agreement, the representatives may utilize other alternative dispute resolution procedures such as mediation to assist in the negotiations. Discussions and correspondence among the representatives for purposes of these negotiations shall be treated as Confidential Information developed for purposes of settlement, exempt from discovery, and shall not be admissible in any arbitration or in any lawsuit without the concurrence of all Parties. Documents identified in or provided with such communications, which are not prepared for purposes of the negotiations, are not so exempted and may, if otherwise discoverable, be discovered or otherwise admissible, be admitted in evidence, in the arbitration or lawsuit.

14.2 Formal Dispute Resolution If negotiations fail to produce an agreeable resolution within ninety (90) days, then either Party may proceed with any remedy available to it pursuant to law, equity or agency mechanisms; provided, that upon mutual agreement of the Parties such disputes may also be submitted to binding arbitration. In the case of an arbitration, each Party shall bear its own costs. The Parties shall equally split the fees of any mutually agreed upon arbitration procedure and the associated arbitrator.

14.3 Continuous Service The Parties shall continue providing services to each other during the pendency of any dispute resolution procedure, and the Parties shall continue to perform their payment obligations (including making payments in accordance with this Agreement.)

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the dates listed below.

KMC Telecom III, LLC	Chesnee Telephone Company, Inc.
By: 	By: 
Name: <u>Marvin B. Johnson</u>	Name: <u>Harold W. Askins, Jr.</u> 5/10/05
Title: <u>Vice President &amp; General</u>	Title: <u>Chief Executive Officer</u>
Date: <u>05/11/2005</u>	Date: _____

## **APPENDIX A**

The following is the list of EAC Exchanges in accordance with Chesnee's General Subscriber Service Tariff:

### **Chesnee Exchanges:**

### **BellSouth Exchanges:**

Chesnee	Spartanburg
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